

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

NOTICE OF MOTION

ANGEL MORALES, et al.,

07 CR 897 (AKH)

Defendants
-----X

PLEASE TAKE NOTICE, that upon the annexed affirmation and memorandum of law of KELLEY J. SHARKEY, sworn to the 9th day of January 9, 2008 and upon the indictment, and all other proceedings here, the defendant, ALEJANDRO OROZCO, will move this Court on a day to be determined by this Court, for an Order granting:

1. Permission to file late due to filing errors;
2. Discovery pursuant to F.R.C.P. 16;
3. Motion for a Bill of Particulars;
4. Discovery, inspection of all materials in the possession of the Government favorable to the defendant pursuant to Brady v. Maryland, 373 U.S. 83 (1963);
5. That ALEJANDRO OROZCO be permitted to join in the motions filed by co-defendants;
6. That the defense be permitted to file further motions.

Dated: Brooklyn, New York
January 9, 2008

Yours, etc.,

KELLEY J. SHARKEY
Attorney for Defendant
ALEJANDRO OROZCO
26 Court Street - Suite 2805
Brooklyn, New York 11242
(718) 858-8843

TO: UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

ANGEL MORALES, et al.,

Defendant.
-----X

AFFIRMATION AND
MEMORANDUM
OF LAW

07 CR 897 (AKH)

KELLEY J. SHARKEY, a member of the Bar of this Court, affirms the following under penalty of perjury:

That I am the attorney of record for the defendant ALEJANDRO OROZCO and I am fully familiar with all the facts and circumstances as revealed by the file maintained in my office.

I submit this affirmation and memorandum of law in support of various motions made by defendant OROZCO.

I. PERMISSION TO FILE LATE

The Court set a motions deadline of January 4, 2008. On January 3, 2008 counsel for Mr. Orozco filed by ecf a Rule 16 Request and a Request for a Bill of Particulars. The format utilized by defense counsel was rejected and counsel refiled the identical motion correcting the ecf heading. Again, the format was rejected. This motion is essentially identical to the motions filed on January 3, 2008 and January 7, 2008 with the addition of a *Brady* request and editing. I respectfully request the Court entertain the motions within.

II. DISCOVERY PURSUANT TO RULE F.R.C.P.16

Statements of Alejandro Orozco

1. All written or recorded statements made by the defendant, at any time and in any context, regardless of the government's intentions with respect to their use at trial. *See* Rule 16(a)(1)(B), Fed. R. Crim. Proc.

2. The defense is in possession of limited documents provided by the government on October 20, 2007. In addition to those documents, the defense seeks disclosure of the audio recordings of the intercepted telephone conversations referenced in the complaint, all records, reports, memoranda, notes. Or other writings which contain the substance of any oral statement made by Mr. Orozco to government or law enforcement authorities, regardless of the government's intentions with respect to the statements's use at trial. *See* Rule 16(a)(1)(B), Fed. R. Crim Proc.

Statements of Co-Conspirators_

3. Please supply the names and addresses of all alleged co-conspirators known to the government but not charged in the indictment. *United States v. Ramierez*, 602 F. Supp. 783, 793 (S.D.N.Y. 1985); *United States v. Chovanec*, 467 F. Supp. 41, 46 (S.D.N.Y.); *United States v. DeGroote*, 122 F.R.D. 131, 137 (W.D.N.Y. 1988).

4. Please provide any written, recorded, or oral statement of co-conspirators, whether or not indicted, made to a public servant engaged in law enforcement activity or to a person then acting under his or her direction or in cooperation with him, which the government intends to offer at trial.

Documents and Tangible Objects

5. The defense has received limited disclosure in the form of a 2 page lab report, a 7 page DEA report and a CD containing photographs relating to the arrests and documents seized from each defendant. In addition to the discovery already received, please provide copies of all books, papers, documents, and photographs which are material to the preparation of the defense or are intended for use at trial or which were obtained from or belong to Mr. Orozco. This request includes, but is not limited to:

- all photographs,
- video tapes and footage,
- surveillance video and audio recordings,
- law enforcement transmission recordings,
- property vouchers,
- shipping documents seized from the tractor trailer, the Bronx apartment of Angel Morales or any other location relevant to this prosecution,
- documents relating to the tractor trailer's ownership and registration,
- phone records derived from the cell phones seized at the time of the defendants

arrests and any other phone record pertinent to the prosecution of this matter.

6. Please provide a description of all tangible objects, or places which are material to the preparation of the defense or which are intended for use at trial or which were obtained from or belong to Mr. Orozco. Rule 16 (a)(1)(E), Fed. R. Crim. Proc.

7. If pertinent, please provide a description of any identification procedure employed in this case, including lineups, show-ups, photo arrays, or the display of Mr. Orozco's person, photo or image to any witness.

8. In addition to the documents provided on October 20, 2007, if additional documents pertaining to search warrants, warrant affidavits, warrant return forms, consent forms, and/or warrant inventories were prepared in connection with this case please provide copies to defense counsel.

9. Please provide copies of all documents that were obtained as a result of searches or seizures, whether with or without a warrant.

Reports of Examinations and Tests

10. Please provide copies of all reports and results of all physical or mental examinations and all scientific experiments or tests which are performed in connection with this case or which are material to the preparation of the defense or intended for uses at trial. Rule 16(a)(1)(F), Fed. R. Crim. Proc.

Expert Testimony

11. Please disclose any evidence which the government may present at trial under Rules 702,703, or 705 of the Federal Rules of Evidence by providing a written report prepared and signed by an expert witness that includes a complete statement of all opinions to be expressed and the basis and reasons therefor, the data or other information relied upon in forming such opinions, and the qualifications of the witness. Rule 16(a)(1)(D), Fed. R. Crim. Proc.

Criminal Record

12. The defense has not received a copy of Mr. Orozco's criminal record pursuant to Rule 16(a)(1)(D), Rule 16(a)(1)(F), Fed. R. Crim. Proc.. It is my understanding this is Mr. Orozco's first arrest, if the prosecution has contrary information the defense requests immediate disclosure.

Other Crimes, Wrongs, or Acts

13. Please describe in detail any evidence of uncharged conduct of Mr. Orozco which the government intends to introduce at trial. *See* Rule 404(b), Fed. R. Evid. In addition, please include any allegations of misconduct which the government may seek to use for impeachment or other purposes at trial.

III. BILL OF PARTICULARS

Pursuant to Fed. R. Crim. Proc 7(f) the defense moves for a Bill of Particulars. Alejandro Orozco has been charged with conspiring to violate the narcotics law of the United States in that he and his codefendants distributed and possessed with intent to distribute 5 kilograms and more of cocaine during August of 2007. I have reviewed the available material disclosed by the government. The information requested below is necessary in order to defend Alejandro Orozco against the crimes charged.

1. The date Alejandro Orozco allegedly joined the conspiracy, and the date he last participated in the conspiracy. *See United States v. Ramirez*, 54 F. Supp. 2d 25, 30 (D.D.C. 1999); *United States v. Strawberry*, 892 F. Supp. 519, 527 (S.D.N.Y. 1995); *United States v. Taylor*, 707 F. Supp. 696, 700 (S.D.N.Y. 1989); *United States v. Aranci*, 28 F.R.D. 12, 14 (D. Conn. 1961).
2. The date(s) and location(s) of any meetings or conversations at which the government will contend that Alejandro Orozco joined the conspiracy. *See Taylor*, 707 F. Supp. 696, 700.
3. The date each of the other defendants allegedly joined and last participated in the conspiracy. *See Ramirez*, 54 F. Supp. 2d 25, 30; *Strawberry*, 892 F. Supp. 519, 527; *Taylor*, 707 F. Supp. 696, 700.

4. The date, location and nature of each overt act committed by Alejandro Orozco in furtherance of the conspiracy, and the identities of all co-defendants with whom he committed each such act. *See Ramirez*, 54 F. Supp.2d 25, 30.
5. The date, location and nature of each overt act committed by each of the other defendants in furtherance of the conspiracy, and the identities of all co-defendants with whom they acted as to each. *See Ramirez*, 54 F. Supp.2d 25, 30; *see also United States v. Hubbard*, 474 F. Supp. 64, 81 (D.D.C. 1979) (requiring government to identify overt acts committed by unindicted co-conspirators).
6. The names of all persons the government claims were co-conspirators. *See United States v. Nachamie*, 91 F. Supp.2d 565, 573 (S.D.N.Y. 2000); *Ramirez*, 54 F. Supp. 2d 25, 30; *Strawberry*, 892 F. Supp. 519, 527; *United States v. Alloco*, 801 F. Supp. 1000, 103 (E.D.N.Y. 1992), *aff'd* 29 F.3d 620 (2nd Cir. 1994); *Taylor*, 707 F. Supp. 696, 700. Please also provide the names of the individual defendants and all unindicted co-conspirators with whom Alejandro Orozco is alleged to have conspired directly. *See Aranci*, 28 F.R.D. 12, at 14-15.

IV. BRADY MATERIAL

Under the principals initiated in Brady v. Maryland, 373 U.S. 83 (1963), the government must deliver to the defendant all evidence favorable to him bearing on any of the issues raised by the indictment or the government's proof at trial. Delay of production of this material until trial may make it of little use to the defense. If, for example, it is only at trial that defendant is informed that a witness absolved him of complicity of an act, it may be too late for defense counsel to find the witness. Pretrial discovery is necessary if any effective defense is to be had. United States v. Coppa, 267 F.3d 132 (2nd Cir. 2001).

V. MR. OROZCO REQUESTS PERMISSION TO JOIN
IN THE MOTIONS OF HIS CO-DEFENDANTS

_____Mr. Orozco is joined in an indictment with 3 other defendants. He requests permission to join in those motions made by any similarly situated co-defendant applicable to him. This joinder will promote judicial economy, prevent unnecessary litigation and should be granted in the interest of justice. *United States v. Feola*, 651 F, Supp. 1068 (1987).

VI. REQUEST TO FILE ADDITIONAL MOTIONS

Counsel has endeavored to bring all motions applicable at this time but requests leave to bring any additional motions which may become necessary based upon the Government's response to the present motions or new facts uncovered by the defendant's ongoing investigation into this case.

WHEREFORE, the defendant respectfully moves for the relief set forth herein, and for such other and further relief as the Court may deem just and proper.

Dated: Brooklyn, New York
January 9, 2008

KELLEY J. SHARKEY
Attorney for Defendant
ALEJANDRO OROZCO
26 Court Street - Suite 2805
Brooklyn, New York 11242
(718) 858-8843

